

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 09-59773

CATRINA M. L. JONES,

Chapter 13

Debtor.

Judge Thomas J. Tucker

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ORDER DISMISSING CASE

On June 24, 2009, Debtor filed a voluntary petition for relief under Chapter 13, initiating this case, and also filed Exhibit D (Individual Debtor's Statement of Compliance With Credit Counseling Requirement). (Docket ## 1, 3.) On Exhibit D, Debtor checked box number 1 which states:

1. Within the 180 days **before the filing of my bankruptcy case**, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, and I have a certificate from the agency describing the services provided to me. *Attach a copy of the certificate and a copy of any debt repayment plan developed through the agency.*

No credit counseling certificate was attached to Exhibit D.

On July 8, 2009, Debtor filed a "Certificate of Counseling" (Docket # 10), which states that on July 8, 2009, Debtor received "an individual [or group] briefing that complied with the provisions of 11 U.S.C. §§ 109(h) and 111," and a new Exhibit D (Individual Debtor's Statement of Compliance With - Amended Credit Counseling Requirement) (Docket # 11). Debtor checked box number 3 on the amended Exhibit D, which states:

3. I certify that I requested credit counseling services from an approved agency but was unable to obtain the services during the five days from the time I made my request, and the following

exigent circumstances merit a temporary waiver of the credit counseling requirement so I can file my bankruptcy petition. *[Must be accompanied by a motion for determination by the court.] [Summarize exigent circumstance here.]* **Debtor was unable to pay for the service over the phone on 6/23/09, due to problems with her debit card. Debtor is disabled, and had to physically go to Greenpath offices on 6/23/09 and make payment directly. However, Greenpath did not provide a copy of the certificate until, and dated it for, 7/8/09. Case was filed on the assumption that certificate was done and available.**

(emphasis added).

For the following reasons, the Court must dismiss this case.

11 U.S.C. § 109(h)(1) requires, with certain exceptions, that a debtor obtain a credit counseling briefing *before* filing a bankruptcy petition. That section provides in relevant part, that

an individual may not be a debtor under this title unless such individual has, **during the 180-day period preceding the date of filing the petition by such individual**, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

(emphasis added). 11 U.S.C. § 109(h)(3) provides a limited exception to § 109(h)(1)'s requirement of obtaining a credit counseling briefing *before* filing the bankruptcy petition. This exception permits a debtor to obtain the required credit counseling briefing up to 30 days after filing the petition, and for cause shown, up to 45 days after filing the petition. Section 109(h)(3)(A) provides:

(3) (A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that—

(i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);

(ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request; and

(iii) is satisfactory to the court.

E.D. Mich. LBR 1007-6(a) provides the procedure that a debtor must use when filing a certificate of exigent circumstances under § 109(h)(3)(A):

(a) Certification Procedures. A debtor who files a certification under 11 U.S.C. § 109(h)(3)(A) shall also file a motion for approval of the certification. The debtor shall file the certification and the motion with the petition, serve it on all parties, and file a certificate of service. The deadline to file a response shall be 10 days after service. If no timely response is filed, the certification shall be deemed satisfactory under § 109(h)(3)(A)(iii) without a hearing or further order. The motion shall be accompanied by a notice that the deadline to file a response is 10 days after service and that if no response is filed, the court will deem the certification satisfactory under § 109(h)(3)(A)(iii) without a hearing.

In this case, Debtor failed to comply with the requirements of both § 109(h)(3)(A) and LBR 1007-6(a).

First, Debtor never filed a motion to approve her certification of exigent circumstances, as required by LBR 1007-6(a). Because that motion must be filed with the petition, it is now too late to file such a motion.

Second, even if Debtor had filed such a motion, Debtor's certification of exigent circumstances fails to explain why Debtor could not obtain credit counseling at least as early as

June 23, 2009, the day before Debtor filed her bankruptcy petition.¹ As a result, it is not “satisfactory to the court” as required by 11 U.S.C. § 109(h)(3)(A)(iii).

Because the exception under 11 U.S.C. § 109(h)(3) does not apply, Debtor must meet the requirement of 11 U.S.C. § 109(h)(1), that she obtain credit counseling *before* filing her bankruptcy petition, to be eligible to be a debtor in this case. Debtor did not meet this requirement. She only received credit counseling *after* her petition was filed.

For these reasons, Debtor is not eligible to be a debtor in this case under 11 U.S.C. § 109(h)(1), and this case must be dismissed.

Accordingly,

IT IS ORDERED that this bankruptcy case is DISMISSED.

Signed on August 31, 2009

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge

¹ It is far from clear, but Debtor *may* be *trying* to say, in her certificate of exigent circumstances quoted at p. 2 of this Order, the she in fact did obtain her credit counseling briefing on or before June 23, 2009, and not on July 8, 2009. That is, Debtor *may* be *trying* to say that the credit counseling certificate she filed is erroneous in stating July 8, 2009 as the date on which she obtained her credit counseling briefing. But Debtor does not actually say this in any of her papers. Nor has she filed a corrected credit counseling certificate.